

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>**

CASE NO. A-6617

PETITION OF CATHY SARRI AND ANTULIO TOBAR

OPINION OF THE BOARD

(Opinion Adopted May 29, 2019)

(Effective Date of Opinion: June 5, 2019)

Case No. A-6617 is an application for a variance necessary for the proposed construction of a single story room addition on an existing house. The proposed construction requires a variance of 0.84 feet, as it is within 6.16 feet of the left (west) side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on May 22, 2019. Petitioner Cathi Sarri appeared at the hearing, assisted by her architect, Eric Saul.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 3, Block R, Silver Spring Park Addition Subdivision, located at 723 Thayer Avenue, Silver Spring, MD, 20910 in the R-60 Zone. The property is rectangular in shape, with a width of 50 feet and a depth of 150 feet, for a total area of 7,500 square feet. See Exhibits 3 and 4.
2. The Statement of Justification ("Statement") indicates that the property contains a house that was constructed in 1926 and sits within the required seven (7) foot side lot line setback. It notes that the existing kitchen is located within this portion of the house. See Exhibit 3. The Statement further indicates that the house also has a more recent addition which is not situated in the setback. It explains the proposed addition as follows:

Petitioner proposed to construct the addition in the small gap between the original house, which sits within the 7' setback, and a more recent addition,

which does not sit within the 7' side setback. The original house sits 6.2' from the west property line. Within this space is the existing kitchen, which is to be renovated. By aligning the proposed addition with the existing house, 6.2' from the property line, the owner will be able to have a consistent west wall for the renovated kitchen.

3. The Statement addresses the various elements of the variance test, noting that the proposed development uses an existing legal nonconforming property or structure, since the original house "was built in 1926 and its western extent sits within the 7' side setback," and stating that the 1926 construction of the existing structure within the 7' side setback was not the result of any actions by the Petitioner.

With respect to the impact of granting the variance on the use and enjoyment of abutting and confronting property owners, the Statement notes that "[t]he proposed addition to the existing structure is only approximately 19 square feet and one story. It will align with the existing house, which has been there for nearly 100 years. Therefore, the addition will not negatively impact the character, health, safety, welfare, or security of the neighboring residents." See Exhibit 3.

Finally, with respect to whether the requested variance is the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause due to the unusual or extraordinary situations or conditions pertaining to the property, in addition to noting that the proposed addition will only add about 19 square feet, and will "align" with the existing, nonconforming western side of the original house, the Statement at Exhibit 3 indicates that:

Without a variance, it would be impractical to renovate the kitchen. Without a consistent wall, the kitchen would be impractical, with cabinets and countertops at different depths. Additionally, the kitchen depth is narrow so every inch is important, and irregular shapes and dimensions would result in an impractical space.

4. At the hearing, Petitioner Cathy Sarri testified that they are seeking permission to encroach less than a foot into the required setback. She testified that if the variance were granted, the resultant side wall of the house would be continuous with the wall of the original house and in line with the wall of the 2005 addition. Ms. Sarri testified that the existing kitchen is very narrow and that they have no other options. She testified that there is a large fence between her property and the abutting property along the affected side lot line that, in addition to its small size, will further minimize any impact that the grant of this variance might have.
5. Eric Saul, the Petitioners' architect, testified that if the requested variance is granted, the proposed construction will hold the line of the original house. He explained the location of relevant bearing walls and how those walls factored into the proposed construction plans. Finally, he testified that the proposed construction would not encroach any closer towards the abutting property to the

left (west) than the side wall of the original house already does, and thus would not interfere with that neighbors' enjoyment of their property.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested side lot line variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the existing house on this property was originally built in 1926 (before the enactment of the County's first Zoning Ordinance) and does not conform to the required side lot line setback, making it a legal nonconforming structure. The Board further finds that the Petitioner is proposing to construct a one-story addition, approximately 19 square feet in size, that will align with the existing nonconforming side wall. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test. See Exhibits 3 and 4.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner did not construct or have control over the placement of the original house, which was built in 1926. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested variance is the minimum necessary to allow this modest addition to align with the western wall of the existing legal nonconforming house, which has been in place for over 90 years, and thus is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise impose.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the construction of the proposed addition continues the residential use of the home, and is consistent with the East Silver Spring Master Plan (2000), which seeks to "[p]reserve existing residential character, encourage

neighborhood reinvestment, and enhance the quality of life throughout East Silver Spring.”

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

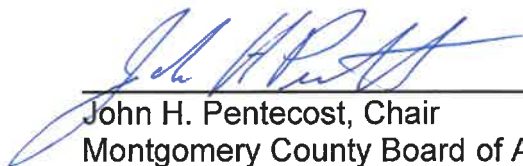
The Board finds that allowing the construction of the proposed 19 square foot addition, flush with the western façade of the original house, will not infringe on the use and enjoyment of abutting or confronting properties since it is modest in size and will not bring the house any closer to the side lot line than is already the case. See Exhibits 3 and 4.

Accordingly, the requested side lot line variance to allow the construction of a single story room addition on this existing home is **granted**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Stanley B. Boyd, Vice Chair, and Jon W. Cook in agreement, and with Bruce Goldensohn necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of June, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.